

TAB 105

James Rowenhorst

October 7, 2005

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SUPERIOR COURT STATE OF CONNECTICUT
COMPLEX LITIGATION DOCKET
AT TOLLAND
X07/CV/03/0083296/S (CLD)

STATE OF CONNECTICUT,
Plaintiff,

-against-

DEY, INC., ET AL.,
Defendants.
~~~~~

CONFIDENTIAL DEPOSITION OF

JAMES ROWENHORST

October 7, 2005  
9:10 a.m.

21 Lake Avenue Extension  
Danbury, Connecticut

Margaret Gmerek, CSR

James Rowenhorst

October 7, 2005

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| <p>1 a reimbursement obstacle or is this</p> <p>2 different from a reimbursement obstacle?</p> <p>3 A. I would lump it in as a</p> <p>4 reimbursement obstacle.</p> <p>5 Q. Okay. I'm confused because I'm</p> <p>6 not an expert in this area and I was</p> <p>7 geared for selling obstacles and we</p> <p>8 switched into reimbursement obstacles so</p> <p>9 I'm going to try to breakdown what you</p> <p>10 said into 2,000 or 3,000 thousand.</p> <p>11 A. Okay. Fair enough.</p> <p>12 Q. On reimbursement obstacles,</p> <p>13 what's an example of a reimbursement</p> <p>14 obstacle?</p> <p>15 A. (No response)</p> <p>16 MR. TUCCI: Objection to the</p> <p>17 form of the question.</p> <p>18 Other than the ones that he has</p> <p>19 already given?</p> <p>20 THE WITNESS: (Responding) In</p> <p>21 consideration of a reimbursement obstacle</p> <p>22 that would be a situation where our</p> <p>23 product would be disadvantaged versus the</p> <p>24 competition so it creates an adverse</p> <p>25 selling environment as a result.</p>                   | <p>1 A. Yes, I would say we had some</p> <p>2 concerns with Combivent and Flomax. Those</p> <p>3 are the ones that I can recall.</p> <p>4 Q. Now, Combivent, do you consider</p> <p>5 that, at that time period, February 1998</p> <p>6 to June of 2000, a BIP product or a</p> <p>7 Roxane product?</p> <p>8 A. That would have -- that is a</p> <p>9 BIP product and was.</p> <p>10 Q. And what about Flomax?</p> <p>11 A. That, at that time period, was</p> <p>12 also a BIP product.</p> <p>13 Q. Is Flomax still a BIP product?</p> <p>14 A. Yes, it is.</p> <p>15 Q. What about Combivent, is that</p> <p>16 still a BIP product?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And as you sit here you can't</p> <p>19 recall the one Roxane product that had an</p> <p>20 adverse reimbursement obstacle, as we're</p> <p>21 talking about it, during this time period?</p> <p>22 A. Not that I can recall 100</p> <p>23 percent.</p> <p>24 Q. You would have to guess, is</p> <p>25 that what you're saying?</p> |
| Page 79                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 81                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 Q. Now, the reimbursement obstacles</p> <p>2 during this time period, February 1998 to</p> <p>3 June of 2000, did you deal with</p> <p>4 reimbursement obstacles just for BIP</p> <p>5 products or where there examples or</p> <p>6 instances where you also dealt with</p> <p>7 Roxane's products?</p> <p>8 A. I vaguely recall being brought</p> <p>9 in on some Roxane product reimbursement</p> <p>10 issues as well.</p> <p>11 Q. And what product, if it's just</p> <p>12 one product -- was it just one product</p> <p>13 that you can recall?</p> <p>14 A. (Pause) I don't know that I</p> <p>15 can even recall the product.</p> <p>16 Q. That was my next question: As</p> <p>17 you sit here now you can't recall what</p> <p>18 that Roxane product was, that was involved</p> <p>19 in a reimbursement obstacle?</p> <p>20 A. No, not that I can 100 percent</p> <p>21 recall.</p> <p>22 Q. As you sit here now do you</p> <p>23 recall any specific examples with BIP</p> <p>24 products during this time period, February</p> <p>25 1998 to June of 2000?</p> | <p>1 A. Yes.</p> <p>2 Q. What would your guess be?</p> <p>3 A. (No response)</p> <p>4 MR. COVAL: Objection.</p> <p>5 He shouldn't guess.</p> <p>6 Q. What is your best recollection?</p> <p>7 A. (No response)</p> <p>8 MR. TUCCI: Same objection, to</p> <p>9 the extent it's a guess.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: (Responding) It</p> <p>12 may have been lithium.</p> <p>13 Q. And, Jim, what is Combivent</p> <p>14 used for?</p> <p>15 A. It's used for treating patients</p> <p>16 with chronic obstructive pulmonary disease,</p> <p>17 it helps them breathe easier.</p> <p>18 Q. How is it administered to the</p> <p>19 patient?</p> <p>20 A. As an inhaler, metered dose</p> <p>21 inhaler.</p> <p>22 Q. Is that covered by Medicare?</p> <p>23 A. No, not that I'm aware of.</p> <p>24 Q. What's Flomax?</p> <p>25 A. It's a drug used for treating</p>                                                                                                                           |

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| <p>1 His understanding was he was<br/>2 unaware of it.<br/>3 THE WITNESS: (Responding) I<br/>4 mean, yeah, with respect to Roxane I'm<br/>5 unaware of their practice of establishing<br/>6 price, AWP being one.<br/>7 Q. Right, prior to today, what I'm<br/>8 asking you now is: Having reviewed this<br/>9 document today --<br/>10 A. The review of this --<br/>11 Q. -- does that change your --<br/>12 MR. TUCCI: Wait a minute.<br/>13 The question isn't done.<br/>14 Q. Having reviewed this document<br/>15 today is your understanding of how AWP is<br/>16 set or determined altered in any way?<br/>17 A. (No response)<br/>18 MR. TUCCI: Objection.<br/>19 MR. GOLDENBERG: I'm going to<br/>20 shut the door.<br/>21 MR. TUCCI: It should be<br/>22 closed.<br/>23 MR. GOLDENBERG: Oh, it is?<br/>24 MR. TUCCI: Note my objection<br/>25 to the form of the question.</p>                             | <p>1 services;" did I read that correctly?<br/>2 A. You've read that correctly.<br/>3 Q. Okay. What is your<br/>4 understanding of what "third-party pricing<br/>5 services" means? Let me rephrase that:<br/>6 What is your understanding of who are the<br/>7 third-party pricing services?<br/>8 A. To my knowledge third-party<br/>9 pricing services include First Data Bank,<br/>10 Medispan, Redbook, those entities that --<br/>11 those pricing services.<br/>12 Q. And this sentence indicates that<br/>13 these AWP changes will be sent to those<br/>14 third-party pricing services sometime in<br/>15 the future; correct?<br/>16 A. This document indicates that<br/>17 those third-party pricing services will<br/>18 receive this document.<br/>19 Q. Right. And that they have not<br/>20 already received it, according to this<br/>21 document; is that right?<br/>22 A. (No response)<br/>23 MR. TUCCI: I object to the<br/>24 form of the question.<br/>25 THE WITNESS: (Witness perusing</p> |
| Page 159                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 161                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1 THE WITNESS: (Responding)<br/>2 After viewing this document my<br/>3 understanding of establishment of -- the<br/>4 awareness and my understanding of how<br/>5 Roxane establishes prices does not change.<br/>6 THE REPORTER: I need to change<br/>7 stenographic paper.<br/>8 MR. GOLDENBERG: Sure.<br/>9 (Whereupon, there was a brief<br/>10 intermission had for the court reporter to<br/>11 change stenographic paper.)<br/>12 MR. GOLDENBERG: Back on the<br/>13 record now.<br/>14 EXAMINATION<br/>15 BY-MR.GOLDENBERG:<br/>16 Q. Jim, if you go back to the<br/>17 first page of this document.<br/>18 A. (Witness perusing documents.)<br/>19 Um-hmm.<br/>20 Q. And it's RoxCt0051141?<br/>21 A. Yes.<br/>22 Q. The sentence that starts with,<br/>23 I'll just read the sentence: "Due to the<br/>24 fact that the AWP has changed notification<br/>25 will also be sent to third-party pricing</p> | <p>1 documents.)<br/>2 It says they will also be sent<br/>3 so, you know, whether they received it<br/>4 prior to, I don't know.<br/>5 Q. Are you familiar with any of<br/>6 the, are you familiar with this price<br/>7 change to furosemide that occurred around<br/>8 August of 2000?<br/>9 A. Am I familiar with it?<br/>10 Q. Well, let me ask you: Do you<br/>11 have any recollection of it?<br/>12 A. No, I don't.<br/>13 Q. Other than what you've seen<br/>14 through this document; correct?<br/>15 A. Correct.<br/>16 Q. So you didn't have any<br/>17 conversations with anybody about furosemide<br/>18 AWP price changing, did you, as far as<br/>19 you can recall?<br/>20 A. Not that I recall, no.<br/>21 MR. GOLDENBERG: I'm going to<br/>22 move on another exhibit, this is Exhibit<br/>23 4.<br/>24 (Document bearing Bates Stamp<br/>25 Nos. RoxCT0075121 through RoxCT0075123 was</p>                                                                                                       |

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| <p>1 marked as Rowenhorst Deposition Exhibit-4<br/>2 for identification, as of this date.)<br/>3 Q. Jim, take some time and flip<br/>4 through the three pages of this document.<br/>5 A. (Witness perusing documents.)<br/>6 Okay. I've reviewed the document.<br/>7 Q. Do you recognize this document?<br/>8 A. I do not.<br/>9 Q. You don't have any recollection<br/>10 of seeing this before; is that right?<br/>11 A. That's correct, I don't recall.<br/>12 Q. But on the top of the first<br/>13 page, which is RoxCT0075121, it reads:<br/>14 "Scenario Analysis Process Impact of<br/>15 Medicare Reform on Combivent UDV;" is that<br/>16 correct?<br/>17 A. That is correct.<br/>18 Q. Okay. Combivent UDV, I think<br/>19 we talked about that earlier.<br/>20 A. We briefly discussed it, yes.<br/>21 Q. And so just refresh me, what is<br/>22 Combivent UDV again?<br/>23 A. Combivent UDV is a form of<br/>24 Combivent in a unit dose vial that would<br/>25 be used as part of nebulization treatment.</p> | <p>1 we're getting way out.<br/>2 MR. GOLDENBERG: Well, we are<br/>3 going to be looking at additional<br/>4 documents related to Combivent UDV<br/>5 which --<br/>6 MR. TUCCI: Which has what to<br/>7 do with this case?<br/>8 MR. GOLDENBERG: Which deals<br/>9 with AWP, focusing on AWP and competing<br/>10 on AWP.<br/>11 MR. TUCCI: We're --<br/>12 MR. COVAL: For BIPI who is<br/>13 not a defendant in the case.<br/>14 MR. GOLDENBERG: Well...<br/>15 MR. TUCCI: Where does it show<br/>16 up in your revised complaint on the<br/>17 attached list of drugs?<br/>18 MR. GOLDENBERG: Well, it<br/>19 doesn't but what I'm saying is if there<br/>20 is evidence of them competing on AWP,<br/>21 whether -- and I believe Jim has<br/>22 testified to the fact that he has done<br/>23 work for both Roxane and BIP during his<br/>24 tenure with Boehringer Ingelheim, --<br/>25 MR. COVAL: For a short period</p> |
| Page 163                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 165                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 Q. And because it would be through<br/>2 Nebulization treatment it would be eligible<br/>3 for state Medicaid reimbursement; is that<br/>4 correct?<br/>5 A. (No response)<br/>6 MR. COVAL: Objection.<br/>7 Q. If you know?<br/>8 A. The drug was never brought to<br/>9 market so it -- you know, whether it<br/>10 would have been reimbursed or not is<br/>11 speculation, I guess.<br/>12 Q. If it would have been brought<br/>13 to market would it have been -- it would<br/>14 have been reimbursable under Medicaid; is<br/>15 that correct?<br/>16 A. (No response)<br/>17 MR. TUCCI: Objection.<br/>18 That calls for a legal<br/>19 conclusion, No. 1. We are getting way<br/>20 far afield here. This is a drug that<br/>21 was never brought to market, it's not a<br/>22 Boehringer, it's not a Roxane drug, it's<br/>23 a BIP drug that was under research.<br/>24 At some point I'm going to<br/>25 direct him not to answer these questions,</p>                                                       | <p>1 of two years.<br/>2 MR. GOLDENBERG: Well, I mean<br/>3 it's clear that these companies<br/>4 interact --<br/>5 MR. COVAL: I don't think --<br/>6 MR. GOLDENBERG: -- with<br/>7 respect to employees.<br/>8 MR. COVAL: That's not the<br/>9 case.<br/>10 MR. TUCCI: That may be your<br/>11 view of it, that's not the view of<br/>12 reality.<br/>13 MR. GOLDENBERG: Well, we each<br/>14 have a different view of reality.<br/>15 MR. TUCCI: That may be.<br/>16 MR. GOLDENBERG: So I mean this<br/>17 is a deposition --<br/>18 MR. TUCCI: I know it's a<br/>19 deposition but under Connecticut rules you<br/>20 are not entitled to annoy, oppress, or<br/>21 harass the witnesses and you are here to<br/>22 take a deposition of fact and issues<br/>23 relating to Roxane, not related to<br/>24 affiliated companies, parent companies,<br/>25 other organizations and their business</p>                         |